

Human Rights

★ Features of Human Rights:

Human Rights are rights, inherent to all human beings, whatever their nationality, place of residence, gender, national or ethnic origin, colour, religion, language or any other status. Human beings are equally entitled to human rights without any discrimination. These rights are all inter-related, inter-dependent and indivisible. (All of these rights are equally important without any importance/privilege to any specific one). ().

Universal human rights are often expressed and guaranteed by law in the form of treaties, customary international law, general principles and other sources of International law. International human rights law lays down obligations of governments to act in certain ways, or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

ECHR
(European convention of Human Rights)
UDHR
(became base for this)

Human Rights Act
1998

HRCP
(Human Rights commission of Pakistan)

★ 1. Universality and Inalienability

Human Rights are universal and inalienable. Everyone in the world is entitled to them. No one can voluntarily give them up, nor can others take them away from him or her.

Equality and Non-discrimination
All individuals are
equal as human beings and by virtue
of each human person. All human beings
are entitled to their without discrimination
of any kind such as Race, Colour,
Sex, Ethnicity, Age, Language,
Religion, Political or other opinion,
Nation, Social origin, disability

2* Indivisibility :

Human Rights are indivisible, whether civil, political, social, economical or cultural in nature. They are all inherent to the dignity of Human being. Consequently, they all have equal status as rights. There is no such thing as "small rights". There is no hierarchy of human rights.

Indivisible

nor they can be privileged from another right, also any right can not be given half

3) Inter-dependence & Inter-relatedness

The realization of one right often depends wholly or impart upon the realization of others.

For instance, the realization of right to health may depend on the realization of right to education or of the right to information.

RTI

(right to information act)
- It has a separate commission
- We can have info for any public body

4-) Participation and inclusion :

Every Person is entitled to active, free and meaningful participation in, contribution to and

enjoyment to civil, political, economic social and cultural development. Through which human rights and fundamental freedoms can be realized.



all women and men should be included in decision making process of the state. All will be included, only then, we could reach optimum system to run the state

5) Accountability and RO's

States and other duty bearers must ^{act in accordance with} comply with legal norms and standards

5

Laid down
Enshrined in Human Rights instruments, where they
failed to do so, the aggrieved are entitled to
institute proceeding for appropriate ^{compensation} redress before
a competent court or adjudicator in accordance
to the rule and procedure provided by law.

1

Historical Background of HR

— to curtail powers of King

* Magna Carta 1215:

After King John of England violated numerous of laws and customs by which England had been governed his Subjects, forced him to sign (Magna Carta 1215) which enumerates what later came to known as Human Rights. Among them, was the right of church to be free from governmental interfere. The rights of all free citizens to own and inherit property and to be protected from excessive tax, it established the right of widows who owned property, to choose not to re-marry and established principles of due process and equality before the law. It also contain provisions forbidding bribery and official misconduct.

* Petition of Rights 1628:

The next recorded milestone in the development of Human Rights was the petition of Rights, produced in 1628 by the English parliament and sent to Charles 1, as a statement of civil liberties. Refusal by parliament to finance unpopular foreign policy of King, which had caused his govt. to exact forced loans and to quarter troops in subject houses as an economy measure.

The petition of rights initiated by Sir Edward Coke was based upon earlier statutes and charters and asserted 4 principles.

- i) No taxes may be levied without parliament's consent.
- ii) No subject may be imprisoned without any cause.
- iii) No soldiers may be quartered upon the citizens.
- iv) Marshall law may not be used in times of peace.

* US Declaration of Independence 1776:

On July 4, 1776 the US congress approved the declaration of Independence. Its primary author Thomas Jefferson wrote the declaration as a formal explanation of why congress had voted to declare independence from Great Britain.

<u>mcq</u> - names - Dates

And as a statement announcing that the 13 American colonies were no longer a part of British Empire. Philosophically, the declaration stressed two themes:

- i) Individual Rights
- ii) Rights of Revolution

* Constitution of USA & Bill of Rights 1791:

The first 10 amendments to the constitution, the Bill of Rights came into effect on Dec-15, 1791, limiting

the powers of Federal govt of US and protecting the rights of all citizens, residents and visitors in American territory. The Bill of Rights, protects freedom of speech, religion, right to keep arms, freedom of assembly and freedom to petition. It also prohibits unreasonable search and seizure, ~~or~~ cruel and unusual punishment. Among the life protections, it affords the Bill of Rights to prohibit the federal govt from depriving any person of life, liberty, property without due process of law.

* Declaration of Rights of Man ^{and of the} Citizen: (France) 1789

In 1789, The people of France, brought about the abolishment of absolute monarchy and sets the stage for the establishment of the first French republic. Just 6 weeks after the storming of the bastille and barely 3 weeks after the abolition of Feudalism. The declaration of rights of man and of the citizens was adopted by the national constituent assembly as a first step towards writing of constitution for the republic of France.

The declaration proclaims that, all citizens are to be guaranteed the rights of liberty, property, security and

resistance to ~~oppression~~ oppression. It argues that
 the need for law, ~~the~~ ^{derives} ~~rite~~ from the fact
 that the exercise of the natural rights of
 each man has only those borders which assure
 other members of the society the enjoyment of
 these same rights. Thus, the declaration ~~sets~~ ^{sees} law
 as an expression of general will, intended to
 promote ~~of~~ this equality of rights and to forbid
 actions, harmful to the society

next on Pg: 5

seductive
- tempting
- attracting

24 - Sep, 202

* First Geneva Convention 1864 :

The main principles laid down in the convention and maintained by the later Geneva Conventions provided for the obligation to extend care without discrimination to wounded and sick military personnel and respect for and marking of medical ^{Personnel} ~~personal~~ transports and equipments with the distinctive signs of red cross on a white background

* UDHR 1948

By 1948, the UN new human Rights Commission had captured the world attention.

Under the dynamic leadership of Eleanor Roosevelt
The commission set-out to draft the document that
became UDHR. Roosevelt credited with its inspiration
referred to the declaration as international Magna
Carta for all mankind. It was adopted by
the UN on December 10, 1948.

In its ^{un-ambiguous} preamble
and in Article 1, the declaration unequivocally
proclaims the inherent rights of all human
beings. ~~The~~ Disregard and contempt for human
rights ~~have~~ resulted in ^{brutal} barbarous acts
which have outraged the ^{sense of right/wrong} conscience of mankind
and the advent of the world in which a human
being shall enjoy freedom of speech. All human
beings are born free and equal in dignity
and rights.

The member state of UN pledged
to work together to promote the 30 articles
of human rights for the first time in history
had been assembled and codified for the
into a single document. In consequence, many
of these rights, in various forms are
today part of constitutional laws of
democratic nations.

6-Oct, 2023

2- Basic Principles.

- 1- we have inalienable rights & inherent dignity
- 2- Its recognition is imp & base for freedom/justice & peace
- 3- Its disregard leads to brutal acts
- 4- People urge for freedom of speech/press
- 5- ~~HR~~ should be protected by ROL.

General Assembly proclaims:

- (a) people should teach & educate others of HR
- (b) take progressive measures like seminars, events, lectures for its knowledge spreading

Civil society

- Doctors, lawyers,
teachers, all
professionals

3- Overview of UDHR:

- Article 1: All are free & equal
- Article 2: No discrimination
- Article 30: Prohibits all to do act violating HR

4- Limitations: (Article; 29)

- (i) if its against law, morals, or ~~is~~ violating/interfering others rights
- (ii) It should not be contrary to principles/preamble of UN

- Intro
- 5 principles
- Rights + exceptions

1) Right to Life :

- Non Derogable (can't be taken away ^{in any circumstances})
- No wanton killing (no govt can do wanton killing ^{if they sign this})

- (i) All should be refrain to do something endangering life / liberty / security of person.
- (ii) Govts should take progressive measures

* Exceptions : (by Article 2 of ECHR)

- Can be deprived by due process of law
- In self defence
- In taking legal actions (i.e. arresting)

* Exceptions of Right to liberty (by Art 5 of ECHR)

- by order of court
- detention, to bring someone before court
- detention, to prevent diseases (i.e. corona), unsound minds, addicts.

2) Freedom from Slavery :

- is antithesis ^{opposite} of liberty & shame on Human dignity
- Should not be there in any form

any form

Freedom from torture:

- * Art 3 of ECHR
 - * Art 7 of ICCPR
 - * Convention against torture, other cruel, inhuman, degrading treatment, Punishment (26, June 1987)
- No torture, no cruel
→ Protects dignity & integrity

Recognition before law:

- Men & women are equal
- Minors are also recognized (by guardians)
- Women have complete capacity (unlike Islamic jurisprudence)
- All are SUI GENERIS (unique)
- Unless legislature enacts qualifications for someone (like, for minors)

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5) Equality before law:

- 1) Art; 7
- 1) All are entitled to equal protection by law (No discrimination)
 - 2) And if there is discrimination / violation of this document, all are entitled for protection from that as well

3) 2) There is:
Equality before law

will be treated
(equally on
same footing)

Dicey says,
all are subject to
ordinary law and
ordinary courts, no exception is there.

§ Equal protection of law

if somewhere HR are given
you can't bypass a certain
community (that this law does not apply to them)
in fact, will be applied to all

6) Effective Remedy:

- Remedy for all, if there's any violation to his HR
- There should be remedial machinery
i.e. courts / tribunals
- It should be there, but it's not an obligation (means, UDHR can't direct a state to have that)

- state should give remedy even if the violation is done by

Art 8

7) Freedom from arbitrary arrest:

- Art 39 → No arbitrary arrest, should have a warrant, detainee should be informed and treated as per due process of law
- If someone is done so, should be given remedy

8) Fair and Public trial:

(Art: 10) → fair & public trial in civil & criminal cases

(Art: 14 of ICCPR) → No press or public in courts

↳ International covenant on civil & political rights

* How Fair?

- one should be informed
- given time to represent (by himself / attorney)
- No delay in trial
- Interpreter & examine witness against him
- No forced testimony against oneself
- To appeal to higher courts

98) Innocence and Retroactivity :

all are innocent
until proven guilty
also if you committed
something not an
offense in law
(Art 14, ICCPR)

no dual punishment

20) Respect for Privacy :

(Art 8; ECHR)

(Art 12 UDHR)

→ No interference to privacy / honour
→ No private info to unauthorized
→ Govt. should protect it

(41) Movement Right :

→ can move & change
residence within a state

Exception

(Art 12; ICCPR) → if in case of national security / public order / Right or freedom
of other

12) Right of Asylum:

Art 14;

- You can go to other countries if there's persecution → hostility / ill-treatment
- but not in case of prosecution or commitment of crime

13) Right of Nationality:

- All should have nationality of somewhere
- Can't be forced to change it, but free to do so
- Can't be deprived of it

14) Marriage & Family:

Art 26 UDHR → Marriage with free consent, everyone can do or dissolve it
= State can put qualification (like 18 years)

15) Right of Property :

Art; 27

- Can have property alone or with partnership
- No one can be deprived of it
- Can be deprived in acc with law

16) Freedom of thought :

- Free to think and have religion
- Freedom to change it
- No coercion to change

17) Freedom of Expression :

- have opinion
- seek, receive / impart info

Limitation :

- if it hurts others respect / reputation
- if subject to National security

18) Freedom of assembly :

- Can make or join a union (Peaceful)
- But can't be forced to do so
- Just not to be subject to national security

19) Public Rights:

- Can join Govt / Public service
- Right to vote
- Authority of govt, based on will of people

20) Social Security:

- health wellbeing
- cultural & economic wellbeing (as per your resources)

21) Work & Employment:

- state duty to give jobs, basic needs,
- Work freely with favourable conditions
- Equal pay for equal work

22) Rest and leisure:

- limited working hours
- weekends off, breaks
- Necessary for personality development & health.

23) Standard of living:

- special care to kids & mothers
- security of sickness, disability, unemployment
- Standard food, clothing, medical care

24) Right to Education:

- Free elementary & fundamental education
- Accessible technical & professional education
- Parents have right to choose field for your children

25) Right to cultural life:

- Participate in cultural events
- Protection against scientific, literary, artistic production & moral or material interests regarding that.

abetment
→ encouraging someone
to do something illegal

CHAPTER # 3

UN Enforcement System

2) Introduction:

- No enforcement procedure of UN or ICJ
- * Two track approach
 - Charter based. (by General Assembly)
 - Treaty based

2) Charter Organs:

- (i) Created by UN charter
 - Security Council
 - General Assembly
 - ECOSOC
 - Trusteeship Council
 - Secretariat
 - ICJ
- (ii) institutions created by
organs created by charter

Methods for responding to Violations.

→ Human Rights Council (2006) responds to violations with procedures

(i) Fact Finding :

→ Special Reporters and Experts ascertain situation & report it to relevant body.

→ They are given rights to find facts:

— freedom of movement (with transport)

— Access to prisons

— Contacts to relevant peoples & access to documents

(c) → govt assure security of people to whom they will meet.

d) → security arrangements

1503 Procedure:

- Is named on ECOSOC resolution 1970
- Procedure wasn't good, amended in June 2007
- made (i) working group on communications

(ii) ECHR

- 5 regional members for 2 year
- analyze complain & state's response and actions

decides on basis of:

- ↳ not if its political manifesto
- ↳ Not if it's only media based and not facts
- ↳ Not if its inconsistent with UN charter, UDHR
- ↳ if its abusive, will be considered after deleting
- ↳ should be submitted by victim or NGO abuses
- ↳ Not if it is already dealt by VNO
- ↳ Not even if you don't have domestic remedy

- Read Question properly in paper

expert
- consist of 5 regional ~~experts~~
for 3 years
analyzes complaints authority and transfers to

iii) 1235 Procedure:

→ Established by resolution # 1235 ESCO SOC

→ 2 things in procedure:

* Annual session debate

— with all govt & NGOs

* Investigations

— However commission sees it fit

Montgomery

Outcomes

* investigations

— However commission sees it fit

→ Name that ~~country~~ country
(it will embarrass them and affect their foreign policy)

→ Nego's might pressurize Govt

→ After debate a draft resolution should be circulated, maybe that country admits and withdraws

→ After approval of commission, chairperson can exhort that country in a way

i * Country should be given advisory services

ii * Should give all to submit all info

iii * State party would response in writing before next session

iv * Then they will be pressurized to take specific measures

v * Appoint independent expert

(to provide technical assistance to country)

vi * Special Reporters will be assigned

(they will submit their reports)

viii * call Security council to apply sanctions

Thematic Special Procedure? — Crown Jewel of UNHR system

- Working groups are made on the categorization of certain themes, instead of govt.
- There are 28 thematic procedures
- Special reports and individuals are formed with different working groups with almost same functions.

Functions:

- * Act urgently on info of violation
- * Respond to allegations (informing the permanent mission that there's violation)
- * Undertake fact finding missions (examining allegations and informing govt.)
- * Examine global phenomenon of violation (for better understanding)
- * Form the international legal framework in this regard
- * Present annual reports documenting their activities

5) UN Human Rights Council

47 members
elected directly
& individually
by a secret
ballot

→ Made by replacing ^{UN} Commission on HR in 2006

OBJECTIVE →

universal, impartial, objective, non-selective council

Mandate:

→ Promote HR education

→ Serve as a forum for thematic issues of HR

→ Promote full implementation of HR

→ Undertake universal periodic Review of fulfilment of obligations by All states

→ Respond to emergencies & does corporate & dialogue

→ Assume responsibilities of a UN office, work in cooperation, make recommendations & submit annual report

6) Universal Periodic Review

50 countries per year
Total in 4 years

- is done for the purpose of developing the developing nations
- that's why it is done on a universal level.
- It should proclaim the HR's in its true spirit
 - universal, interdependence, indivisibility, interrelatedness
- Should be done on objective basis & reliable info
- It should analyze all the countries and their progress to enforce these rights and should recommend them, the measures they can take for betterment
- Should be non-biased,
- should consider inter-governmental processes
- integrate gender perspective
- should consider countries resources and capability into acc
- and analyze their challenges
- also consider HRC capacity & budget & time

OHCHR

Office of High
Commissioner of
Human Rights

Convention against Torture Pg: 118

Intro:

- adopted by GA in 9-Dec-1975
- Pursuant to this, the convention got adopted in
- ~~26 June~~ 20 Dec-1984
- after ratification by 25th state party
- came into force in 26-June 1987

Definition: (No Basic Principles)

→ To torture someone (giving physical or mental suffering) on orders of a powerful or public authority for sake of may be taking of some info or pressurizing him or 3rd person for such purpose, other than the lawful act.

Duties of State: (Shouldn't be one liner)

→ Each state shall make laws, administrative / judicial measures to prevent torture

State: (Shouldn't be one liner)

- 1 → Each state shall make laws, administrative / judicial means to prevent torture.
- 2 → Even political instability, war or its threat, or any public emergency can be taken as justification.
- 3 → No public authority's consent is justification.
- 4 → State shouldn't extradite, if there's a chance that person would be tortured.
- 5 → Torturing, being partner, or attempting to do so should be a criminal offense everywhere.
- 6 → These offenses should be punishable.
- 7 → If offender & offended are your citizen, it's your jurisdiction.
- 8 → It will still be your jurisdiction even if one is living in your state for time being.
- 9 → Should take offender in custody, inform his state, present him in court.
- 10 → Fair treatment to the offender.
- 11 → Torture-related offenses should be extraditable, even if there's no treaty between you both, take this convention as basis.
- 12 → States should assist each other in such cause.
- 13 → Person in custody shouldn't be tortured.
- 14 → There should be systematic review.
- 15 → State is bound to take an action if there's any case in its jurisdiction.
- 16 → Tortured person has right to complain, & should've fair trial.
- 17 → Offended should get compensation.
- 18 → Statements or confessions aren't valid, which are got in result of torture.
- 19 → Other than defined torture, other inhuman, degrading acts should also be prevented.

one of 8, ~~human~~
UN-linked human
rights treaty.

* Committee against Torture :

- there should be a committee against torture
- 10 HR experts selected from different regions for 4 years
- Its members shall be elected by secret ballot
- All state parties shall submit regular reports to committee within one year, after that, every four years

Read &
on priority
→ give headings
for what is
asked

→ Committee will give concluding observations.

→ Committee can consider individual complaints

→ Sec " " will give annual report to G.A.
general assembly

~~_____~~

Pg: 246

Beyond Chains

Intro

than"

Def: "one having power/right of ownership on another"

* Traditional ' Chatted ' Slavery :

→ Even in war or otherwise, military if forces people to work for them unpaid, is slavery.

→ Although its legally unpracticed, but the generations are still bound to work unpaid & stuff.

→ there's no committee, nor there is anyone bound to give annual report, but the non-govt organization can submit that, to working group. (made in 1974)

war-torn?

Bounded Labour:

Mr. Justice Bhagwati →

They are non-beings, treated worse than animals as they can't even move. It happens for years & years until debt is wiped out (which never happens). It is against egalitarian socio-economic order.

* Sexile Marriage :

This convention
also prohibits

- (i) If parents take money & fix her marriage without right to refuse
- (ii) If husband or family sale her
- (iii) If her husband dies, she is given to his brother like if she were a commodity.

ostensibly
↳ as appears

- If girl is sold
- If dowry is given, or bound to be given to husband or to wife
- (→ last 4 paragraphs are to be explained)

evitate
forced marriage
to brother

Pawn ?

* Child labour :

Nimble fingers

→ Afghani carpets are made
by kids as they have
neat fingers.

★ Slavery Like Practices:

1) Forced Labour: